



DEPARTMENT OF THE AIR FORCE
HQ WARNER ROBINS AIR LOGISTICS CENTER (AFMC)
ROBINS AIR FORCE BASE GEORGIA

64-10, Part 12
Turner
01 Oct 99

19 AUG 1999

MEMORANDUM FOR SEE DISTRIBUTION

FROM: WR-ALC/PK

SUBJECT: Acquisition of Commercial Items, FAR Part 12

1. Recent statistics indicate that we are making positive strides in increasing the use of FAR Part 12 commercial acquisition procedures. As of 30 Jun 99, WR-ALC/PKO was utilizing commercial procedures 92% of the time (a 3% increase from last year) and the central buying offices were using commercial procedures 26.5% of the time (a 76.6% increase from last year). Despite these encouraging numbers, there is still opportunity for expanded usage. This memorandum is issued for the purpose of clarifying my position on the use of FAR Part 12 procedures.

2. One of the most significant changes that has occurred with respect to commercial acquisitions has been the broadening of the definition of a Commercial Item. Previously, the FAR defined a commercial item in restrictive terms. The new FAR 2.101 definition for a commercial item is much more inclusive, as Congress intended. Thus, many more of our acquisitions can now meet the definition of a commercial item. In addition to this, the contracting officer, in conjunction with their requirements counterparts, has the authority to determine commerciality. In fact, the GAO has stated:

"Determining whether a product or service is a commercial item is largely within the discretion of the contracting agency, and such a determination will not be disturbed by our Office unless it is shown to be unreasonable. (B-277241.8, 21 Oct 97)"

Given the above, each new acquisition should be examined to see if the item meets the current definition. If the answer is "yes," then FAR Part 12 procedures are to be used.

3. The greatest constraint from utilizing FAR Part 12 procedures is the prohibition against the use of any contract type other than firm-fixed price contracts or fixed-price contracts with economic price adjustment. FAR Part 12.207 states:

"Agencies shall use firm-fixed-price contracts or fixed-price contracts with economic price adjustment for the acquisition of commercial items. Indefinite-delivery contracts (see Subpart 16.5) may be used where the prices are established based on a firm-fixed-price or fixed-price with economic price adjustment. Use of any other contract type to acquire commercial items is prohibited."

In the past, there has been a tendency for a strict interpretation of this regulation to mean a FAR Part 12 contract cannot contain a cost line item. However, I have discussed this matter with Brad Adams, WR-ALC/JAN, and have decided that a cost line item on a FAR Part 12 contract is permissible when the cost line item is ancillary to the main purpose of the contract and represents a relatively small portion of the total effort. As always, good business judgment should be used when making this determination.

4. Because the FAR language concerning Part 12 is continually changing, I am directing that all buyers and contracting officers read or reread FAR Part 12 and its supplements to familiarize themselves with the procedures contained therein. Again, if your acquisition meets the definition of a commercial item and fits within the guidelines provided in paragraph 3 above, FAR Part 12 procedures shall be used.

5. At my request, WR-ALC/PKPB will be developing a training class on FAR Part 12 to be given to the workforce early in the new fiscal year. Any specific needs or desires that you may have with respect to this training should be forwarded to Margie Tyner, WR-ALC/PKPB, 69001.

Original Signed By:

DAVID D. BURTON, SES
Director
Directorate of Contracting

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